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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,736	03/19/2004	Dennis L. Davis	ECI06-GN017	8280
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TAFT, STETTINIUS & HOLLISTER LLP				
SUITE 1800				
425 WALNUT STREET				
CINCINNATI, OH 45202-3957				
EXAMINER				
SMALLEY, JAMES N				
ART UNIT		PAPER NUMBER		
3727				

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/804,736

Applicant(s)

DAVIS ET AL.

Examiner

James N. Smalley

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-23 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Rohrig US 6,758,364 in evidence of Blake US 4,699,300 and in evidence of LoTurco US 4,739,906.

Rohrig '364 teaches a valve assembly comprising a container and lid with a valve having a collapsible tower (12), opening (24), raised circumferential wall (11) secured by snap fit into a liquid conduit with a radial passageway (15). The raised circumferential wall (11) is read to comprise the two arcuate walls inbetween which the valve tower extends. Examiner notes fluid appears capable of passing through opening (24) into one of the openings (15) located between the drink opening and the vent opening, as shown in figure 3.

Examiner specifically notes the claims only require that the collective collapse of both walls in order to provide fluid communication. In Rohrig '364, the fluid sealing appears to be only managed by lip (7). However, the claim requires that both walls collapse to provide fluid communication, but does not require that each wall individually is capable of sealing. in evidence of Blake '300 and LoTurco '906, both of which teach collapsible towers similar to tower (12) of Rohrig '364, Examiner asserts the tower of Rohrig '364 is capable of being used in the intended manner, and thus anticipates the claimed invention. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

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Regarding claim 23, Examiner notes the valve has a thicker lower portion to seal opening (15) comprising the reinforced portion, and thin flaps (7) which are of a lesser flexibility.

### ***Response to Arguments***

3. Applicant's arguments, see Remarks, filed 25 April 2006, with respect to the rejection of claims 10-15 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph have been fully considered and are persuasive. The rejection of the claims on these grounds has been withdrawn.

4. Applicant's arguments filed 25 April 2006 have been fully considered but they are not persuasive.

In response to Applicant's arguments that Rohrig fails to teach a second wall collapsing, Examiner notes that the wall of Rohrig will collapse, as will be discussed below. The main argument in maintaining this rejection is that the claim only requires the collective collapse of the two walls in order to provide fluid communication. Examiner notes the wall (12) may not directly seal, but it is capable of collapse, and in conjunction with the collapse of the sealing lip (7) the valve allows fluid communication and thus anticipates the claim. In response to Applicant's arguments that the central valve tower could be formed solid, and therefore will not collapse, Examiner contends this does not overcome the rejection. Examiner notes the tower is shown hollow and will collapse. To show evidence of this, Examiner cites Blake US 4,699,300 and LoTurco US 4,739,906 to demonstrate the collapsibility of such a tower.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Blake US 4,699,300 and LoTurco US 4,739,906 are cited to demonstrate the collapsibility of a valve tower similar to that of Rohrig.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER